



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0131]

RIN 1625-AA00

Safety Zones; Sellwood Bridge Project, Willamette River;
Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing two safety zones to remain in effect throughout the duration of the construction and renewal of the Sellwood Bridge located on the Willamette River in Portland, Oregon. This action is necessary to ensure the safety of vessels transiting in close proximity to cranes, barges, and temporary structures associated with this construction project. During the effective period, all vessels will be required to remain at the prescribed safe distance from the construction area while transiting in the vicinity of the Sellwood Bridge project; however, the establishment of these safety zones does not entirely close this section of the Willamette River. The section of the Willamette River between the

safety zones will remain open for vessel transits, and it will have a minimum channel width of 138 feet at all times.

DATES: This rule is effective from July 1, 2012 until January 31, 2015.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0131 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0131 in the "Search" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this Temporary Final Rule, call or e-mail ENS Ian McPhillips, Waterways Management Division, Coast Guard MSU Portland; telephone 503-240-9319, e-mail msupdxwwm@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security

FR Federal Register

NPRM Notice of Proposed Rulemaking

Regulatory History and Information

On May 14, 2012 we published a notice of proposed rulemaking (NPRM) titled Sellwood Bridge Project, Willamette River (77 FR 15009). We received no comments on the proposed rule. There were no requests made for public meeting regarding this rule and none were held. No other documents have been published for this rulemaking.

Basis and Purpose

The Sellwood Bridge project will replace the existing 86 year old bridge that is structurally inadequate and functionally obsolete. The project will renew the bridge with a new deck arch structure compliant with current loading and seismic requirements, upgrade the interchange at Oregon Route 43, and provide substantially improved bicycle and pedestrian facilities. Construction work will continue through January 1, 2015. The project includes the construction of two temporary structures and two new bridge piers which will each require a cofferdam. The temporary structures will be constructed to facilitate the moving of the older bridge. To ensure the safety of construction crews on the barges, temporary structures, and cranes, two

safety zones on each side of the river are being established to require vessels in the vicinity of the construction area to remain outside of the two designated safety zones. Additionally, these safety zones will ensure that the vessels operating in the vicinity of the designated area will not be in any dangerous areas near the temporary structures or cranes.

Discussion of the Rule

The rule establishes two safety zones that cover all waters of the Willamette River; however, the establishment of these safety zones does not entirely close this section of the Willamette River. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum channel width of 138 feet at all times. The safety zone on the western river bank encompasses all waters of the Willamette River within the following four points:

45-27'53.5"N	122-40'03.5"W
45-27'53.5"N	122-39'58.5"W
45-27'49.5"N	122-39'58.5"W
45-27'49.5"N	122-40'04.5"W

The safety zone on the eastern river bank is encompassed within the following four points:

45-27'53.5"N	122-39'50.5"W
45-27'53.5"N	122-39'55.0"W
45-27'49.5"N	122-39'55.0"W
45-27'49.5"N	122-39'47.0"W

Geographically this rule covers the waters of the Willamette River for two zones east and west of the main shipping channel, 100 feet upriver and downriver of the existing Sellwood Bridge, from the edges of the shipping channel outward to the east and west shorelines. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum width of 138 feet at all times. These safety zones will ensure the safety of the all vessels and crew that are working and transiting in the construction areas.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of

quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866. The Coast Guard has made this determination based on the fact that the safety zones created by this rule will not significantly affect the maritime public because vessels may still transit in the vicinity of the safety zones.

Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to

operate in the area covered by the safety zones. The safety zones will not have a significant economic impact on a substantial number of small entities because the area can still be used to transit through this section of the river, which will maintain a minimum width of 138 feet. Other maritime users, such as dragon boats, kayaks, and canoes, will be able to transit around the safety zones or through the open section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ENS Ian McPhillips, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail msupdxwwm@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of the people, places or vessels.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such any expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interferences with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this determination is available in the docket where

indicated under ADDRESSES. This rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the instruction. This rule involves the creation of two safety zones.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-207 to read as follows:

§ 165.T13-207 Safety Zones; Sellwood Bridge project, Willamette River; Portland, OR.

(a) Location. The safety zone on the western river bank encompasses all waters of the Willamette River within the following four points:

45-27'53.5"N	122-40'03.5"W
45-27'53.5"N	122-39'58.5"W
45-27'49.5"N	122-39'58.5"W
45-27'49.5"N	122-40'04.5"W

(b) The safety zone on the eastern river bank encompasses all waters of the Willamette River within the following four points:

45-27'53.5"N	122-39'50.5"W
45-27'53.5"N	122-39'55.0"W
45-27'49.5"N	122-39'55.0"W
45-27'49.5"N	122-39'47.0"W

(c) Regulations. In accordance with the general regulations in 33 CFR Part 165, subpart C, no person may enter or remain in the safety zones created in this section or bring, cause to be brought, or allow to remain in the safety zones created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port Columbia River or his designated representative. The Captain of the Port Columbia River may be assisted by other federal, state, or local agencies with the enforcement of the safety zones.

(d) Enforcement Period. The safety zones created by this section will be in effect from 11 a.m. on July 1, 2012 through 11:00 p.m. on January 31, 2015.

Dated: June 5, 2012

B. C. Jones
Captain, U. S. Coast Guard
Captain of the Port, Columbia
River

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